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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,313	05/16/2007	James W. Cree	TRED54 (345 US)	3997
53476 7590 10/27/2010 TESSARI PATENT LAW GROUP, PLLC 301 LINDENWOOD DRIVE - SUITE 206 MALVERN, PA 19355				
EXAMINER				
VONCH, JEFFREY A				
ART UNIT		PAPER NUMBER		
1788				
MAIL DATE		DELIVERY MODE		
10/27/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/582,313

**Applicant(s)**

CREE ET AL.

**Examiner**

Jeff A. Vonch

**Art Unit**

1788

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2010 and 12 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 7, 10-14, 16-18, 27, 28, 41 and 45-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-3, 7, 10-14, 16-18, 27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41 and 45-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Response to Amendment***

1. Applicant's amendments filed August 26<sup>th</sup>, 2010 have been entered. Claim 41 has been amended. Claims 42-43 have been cancelled.
2. All Section 103 Rejections regarding Curro as the primary reference have been withdrawn due to Applicant's arguments filed on October 12<sup>th</sup>, 2010 as being persuasive.
3. All Section 103 Rejections regarding Hutson as the primary reference have been withdrawn due to Applicant's amendment.

#### ***Election/Restrictions***

4. This application contains claims 1-3, 7, 10-14, 16-18, and 27-28 drawn to an invention nonelected with traverse in the reply filed on August 18<sup>th</sup>, 2009. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### **NEW REJECTIONS**

#### ***Claim Rejections - 35 USC § 102***

5. Claims 41 & 45-47 are rejected under 35 U.S.C. 102(a)/(e) as being anticipated by Hutson et al. (U.S. Pub. No. 2003/0105446) (hereinafter "Hutson").
6. Regarding claim 41, Hutson teaches an elastic material composite (abstract) comprising an vacuum formed and laminated material [0038 & 0063] for an absorbing and containing body exudates in an absorbent article [0038] comprising an apertured vacuum formed [0052] film

[0052] laminated to a bonded [0026] carded nonwoven fibrous web [0050] formed from the same extensible materials as Applicant [0051]) ([0052] & Fig. 1A) that is then activation stretched to break (create access areas) in the non-elastic layer ([0057] & Fig. 1B).

7. Regarding the limitation “extensible”, Hutson states that the non-elastic layers are stretched, in that they do not break immediately, and may have different levels of stretch imparted to them [0058] and therefore, to one of ordinary skill in the art would understand the non-elastic layers to be inherently extensible [0030]. Furthermore, the nonwoven layers (the entire composite) would become “extensible” (wherein elastic always means extensible however the reverse is not true) upon activation stretching.

8. Regarding the limitation “the surface of the film is exposed”. The surface of the film is taken to mean any surface include the inner surface of the apertures (Fig. 2 [24]) which would be exposed. In addition, normal processing conditions meaning breakage is non-controlled [0058] would inherently cause the access areas in the nonwoven layers and apertures in the previously formed film layer not to be in perfect registration meaning some of the film’s top/upper surface would be exposed through the apertures.

9. Regarding claims 45-46, Hutson teaches an absorbent article that is an incontinence product [0063].

10. Regarding claim 47, Hutson teaches the composite can be used as a topsheet [0063].

### ***Response to Arguments***

11. Applicant's arguments regarding Hutson as a primary reference have been fully considered but they are not persuasive.

12. Applicant argues that Hutson does not disclose an extensible bonded carded nonwoven web. The Examiner disagrees as recited above in the rejection of claim 41.

13. The term "extensible" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention, as there are a variety of definitions in the art.

14. The Examiner has given the term "extensible" its broadest reasonable meaning in that a layer is able to be extended/stretched to some degree without immediately breaking. Since Hutson's non-elastic nonwoven layers are able to be stretched before breaking, they would meet the limitation of "extensible".

15. Lastly, the term "non-elastic" is not taken to mean "not extensible". This is supported in Hutson as recited above. There is a certain level of overlap between the two terms in that an elastic layer must be extensible, but that does not mean the reverse holds true in that an extensible layer must be elastic.

16. Applicant also argues that Hutson fails to disclose that the access areas expose the surface of the film. The Examiner disagrees as recited above in the rejection of the claim 41. Furthermore, the Examiner also does not think that because a Fig. may demonstrate registration of apertures that the invention requires it. Nowhere in the disclosure does the invention require that the film apertures be aligned with the access areas in the non-elastic nonwovens.

17. Applicant finally argues that Hutson uses an elastic film and that the modification by Curro would require the use of an inelastic film. The Examiner disagrees because the only modification proposed by Curro was the addition of a surface energy gradient. No material substitutions were required.

18. Furthermore, the Applicant's third argument is rendered moot upon Applicant's amendment on August 26<sup>th</sup>, 2010 deleting the limitation that required the addition of Curro.

### ***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

20. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff A. Vonch whose telephone number is (571) 270-1134. The examiner can normally be reached on Monday to Thursday 8:30-6:00 EST.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/  
Supervisory Patent Examiner, Art Unit 1783

/J. A. V./  
Jeff A. Vonch  
Patent Examiner, Art Unit 1788  
October 21<sup>st</sup>, 2010